



REGION 8

2005 FEB -1 PM 12:54

FILED
EPA REGION VIII
HEARING CLERK

<http://www.epa.gov/region08>

IN THE MATTER OF:

DALLAS AERO, LLC.

P. O. Box 128

Poplar, MT 59255

RESPONDENT

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

DATE _____

DATE February 1, 2005

Alfred C. Smith

Regional Judicial Officer

FILED
EPA REGION VIII
HEARING CLERK

4. Respondent, by executing this Consent Agreement, hereby certifies to EPA that they are now in compliance with each of the relevant provisions of section 311(j) of the Act, 33 U.S.C. §1321(j).

5. Respondent consents to the payment of a civil penalty in the amount of three thousand eight hundred six dollars and sixty cents (\$3,806.60).

6. Respondent agrees and consents to the following:

a. After Respondent has received the Final Order in this matter, Respondent shall pay a civil penalty of three thousand eight hundred six dollars and sixty cents (\$3,806.60) in two payments in accordance with the following schedule:

1st payment of \$1,903.30 is due and must be received by not later than 03/05/05;

2nd payment of \$1,903.30 is due and must be received by not later than 03/05/06;

by sending certified or cashier's checks, **payable to "Oil Spill Liability Trust Fund,"** with the docket number and Respondent's name written on the check, to:

Donna Inman (8ENF-T)
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

The checks shall reference the name and address of Respondent's facility and the EPA docket number of this action.

b. **Copies of the cashier's or certified checks** shall be sent simultaneously to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and Brenda L. Morris (8ENF-L)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

7. Respondent further agrees and consents that if Respondent fails to make any of the installment payments on the due date specified Respondent shall:

- a. Pay interest of six percent (6%) per annum on any stipulated penalty amounts or any amounts specified in subparagraph 6.a., above, which will begin to accrue from the specified due date;
- b. Pay a handling charge of fifteen dollars (\$15.00) that will be assessed on the 31st day and each 30-day period that any stipulated penalty amounts or any amounts specified in subparagraph 6.a.; above, are due and unpaid; and
- c. Pay an additional penalty of six percent (6%) per annum that will be assessed on any stipulated penalty amounts or any amounts due and unpaid if payment is not received within 90 days of the due date.

8. All late payments received by Respondent will be applied first to the charges specified in subparagraphs 7. a.- c., above, and next to any unpaid principal amount.

9. Should Respondent fail to make a timely payment in accordance with the installment schedule referenced above, or the stipulated penalty schedule in paragraph 24, below, EPA maintains and reserves sole discretion to require Respondent to pay immediately upon notification to Respondent the full amount of any stipulated penalty and/or the full amount of the civil penalty (\$3,806.60) or any portion thereof outstanding plus the handling charge, additional penalty, and interest referenced in subparagraph 7. a. - c., above.

10. The parties agree that Respondent's penalty should be mitigated by a Supplemental Environmental Project ("SEP").

11. Within thirty days (30) days of receipt of a signed Final Order in this matter, the Respondent agrees to undertake the SEP which the parties agree is intended to secure significant

environmental or public health protection and improvements. The SEP is defined in Exhibit A to this Consent Agreement and includes purchasing personal protective gear and oil spill equipment for use by the Town of Poplar in their water, sewer, garbage, and fire departments serving Poplar, Montana.

12. Respondent agrees to complete the SEP by no later than July, 2006, and expend a total of not less than seven thousand sixty nine dollars and forty cents (\$7,069.40) on the SEP.

13. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

14. Whether Respondent has complied with the terms of this Consent Agreement, including the purchasing of the personal protective gear and oil spill equipment as detailed in Exhibit A shall be the sole determination of EPA.

15. Subsequent to the issuance of the Final Order in this matter, Respondent shall submit Semi-Annual Reports by the first day of July, 2005, February, 2006, and August, 2006,

to: Brenda Morris, Attorney

US EPA, Region 8ENF-L
999 18th Street, Ste. 300
Denver, CO 80202-2466

and include the following information:

- (i) A detailed description of the SEP activities performed to date;
- (ii) A description of any problems encountered and the solutions thereto; and
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks.

16. Respondent shall provide Complainant with a SEP Completion Report by no later than August 1, 2006, and mail it to Brenda L. Morris at the address listed above, which shall include the itemized costs of the SEP with copies of purchase orders and receipts or canceled checks evidencing the total expenditure of the SEP of \$7,069.40.

17. Respondent shall maintain legible copies of documentation of any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a period of not less than three years subsequent to the completion of the SEP, and Respondent shall provide the documentation to EPA within seven days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

18. Respondent agrees that failure to submit the Semi-Annual Reports and/or the SEP Completion Report required by paragraphs 15 and 16 of this Agreement shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties pursuant to paragraphs 22 and 23, below.

19. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for alleged violations of the Clean Water Act, as amended by the Oil Pollution Act."

20. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible expense for purposes of Federal taxes.

21. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraph 11 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 12 above, Respondent shall be liable for stipulated penalties to the United States in the amount equal to the difference between the stated cost of the SEP (\$7,069.40) and the actual amount expended on the SEP.

22. In the event that Respondent fails to submit the Semi-Annual Reports required by paragraph 15 above, Respondent shall pay a stipulated penalty in the amount of \$25 for each day after the report was originally due until the report is submitted.

23. In the event that Respondent fails to submit the SEP Completion Report required by paragraph 16 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the first day of August, 2006, until the report is submitted.

24. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 6, above. Interest and late charges shall be paid as stated in paragraph 7, herein.

25. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA

26. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

27. This Consent Agreement constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in the Complaint. Nothing in this Consent Agreement is intended to nor shall be construed to operate in any way to resolve any criminal liability, if any. Compliance with this Consent Agreement shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

28. Each undersigned representative of the parties to this Consent Agreement certifies that he/she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

29. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement.

In The Matter of: Dallas Aero, LLC
Docket No CWA-08-2004-0038
(Continued)

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8
Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 1.26.05

By: Elisabeth Evans
Elisabeth Evans
Director
Technical Enforcement Program

Date: 1.30.05

By: David Janik
Michael T. Rusner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: 1-31-05

By: Brenda L. Morris
Brenda L. Morris, Attorney
Legal Enforcement Program

DALLAS AERO, LLC, Respondent.

Date: 1/20/05

By: D. Tracy O'Connor
D. Tracy O'Connor
(Print name of signatory)

**KNIERIM, FEWER &
CHRISTOFFERSEN, P.C.**
Attorneys at Law

LAURA CHRISTOFFERSEN
E-mail: 2laurac@nemontel.net

20 Broadway
P. O. Box 650
Culbertson, MT 59218
Telephone: (406) 787-5700
Fax: (406) 787-5842

January 25, 2005

Brenda Morris
U.S. E.P.A. Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Subject: Dallas O'Connor/Dallas Aero, LLC
SEP plan

Dear Brenda:

Please consider this letter the SEP plan proposal for Dallas Aero, LLC. The settlement is for \$10,876.

We propose that the civil penalty be split and paid as follows:

1/5/2005	\$1,903.30
1/5/2006	\$1,903.30

Then we propose a SEP plan as follows for the balance of \$7,069.40:

- Four Gas Monitors
- Confined Space Entry Kit
- Full Body Harness and tripod

Supply a four gas monitor capable of monitoring up to four gasses simultaneously to include LEL, O₂, H₂S and CO. This unit shall be supplied with a motorized sampling pump, rechargeable Ni-Cad Battery Pack, spare Ni-Cad battery pack and 115V compact charger. The unit shall be required to measure combustible gasses from 0 to 100% LEL in 1% increments, Methane 0 to 5% of volume in 0.1% increments, Oxygen - 0 to 30% of volume in 0.1% increments and Carbon Monoxide, Hydrogen Sulfide - 0 to 999 ppm in 1 ppm increments. The monitor shall be of like quality or equal to the TMX412 Multi-Gas Monitor as manufactured by Industrial Scientific and supplied by DXP Safety Master, Billings MT. @1-800-947-7120 **\$1776.96**

Offices in Glasgow, Poplar and Culbertson

Matthew W. Knierim
James K. Fewer
130 Third Street South - P. O. Box 29
Glasgow, MT 59230
Telephone: (406) 228-2487
Fax: (406) 228-2460

Ryan C. Rusche
214 Second Avenue West - P. O. Box 405
Poplar, MT 59255
Telephone: (406) 768-3035
Fax: (406) 768-3037

Brenda Morris
January 25, 2005
Page 2

Supply a combination Tripod/Winch/SRL unit as manufactured by DBI Sala or approved equal. The tripod shall be a minimum of 7 foot in height constructed of aluminum frame with adjustable locking legs, safety chains; rubber safety shoes containing spiked edges, top pulley assembly, leg mount pulley and mounting bracket base. The winch shall be supplied with a 60 foot of ¼ inch stainless steel cable and winch bag. A sealed SRL with emergency retrieval and 50 foot 3/16 inch galvanized cable, mounting bracket and carrying bag.

A full body harness shall be supplied by the Contractor and shall include all necessary equipment to match the above specified tripod/winch/SRL. The harness shall be a Miller Duraflex Harness model E650-4 as supplied by Miller Duraflex. **\$2399.12**

Standard gas powered blower and hose for entry into confined spaces. **\$778.24**

20 gallon HazMat Kit **\$673.28**

Low profile 55 gallon drum containment system **\$390.46**

Subsurface leak detector waterlines **\$ 2450.00**

Arsenic/lead /copper test kits **\$ 175.00**

Mini inhaler/resuscitator **\$257.16**

The above items total approximately \$8900.00 and the pricing is from the USABLUE BOOK water and wastewater supply house. The costs do not include freight.

We propose that the SEP items be purchased by Dallas Aero, LLC for the Town of Poplar, for use in their sewer, water, garbage and fire departments. In particular, these items are needed by the sewer department to deal with the discharge of oil, gas and other toxic materials into the sewer system in Poplar, Montana.

We propose that the items (up to the value of \$7,069.40) be purchased over a two year period with the first purchases to occur in June, 2005 and the final purchases to occur no later than June 30, 2006.

Poplar has had a significant history with contamination of a variety of kinds including petroleum discharge. Presently there

Brenda Morris
January 25, 2005
Page 3

are the following four sites on the CECRA Priority list dated July 28, 2004¹:

<u>Entity</u>	<u>City</u>	<u>County</u>	<u>Priority</u>
A & S Industries	Poplar	Roosevelt	H
Moe Chevrolet	Poplar	Roosevelt	M
Old Poplar Landfill	Poplar	Roosevelt	M
Tule Creek Gas Plant			
Crystal Oil	Poplar	Roosevelt	M


In addition on the WQA² Priority Site, July 27, 2004, Poplar has the following listed site:

<u>Entity</u>	<u>City</u>	<u>County</u>	<u>Priority</u>
Shell Oil Pipeline			
Release			
Poplar Substation	Poplar	Roosevelt	L

In addition to these listed sites, I am aware of at least two and maybe three underground storage tank discharges which have occurred within the city limits of Poplar, Montana which have also directly impacted the sewer system.

Several of the listed sites directly impact the sewer plant and lagoons in Poplar, Montana and thus the requested equipment will be very useful in protecting the employees in their daily work but also in times when they are assisting with clean-up efforts due to the discharges to the sewer system.

Sincerely,


LAURA CHRISTOFFERSEN

LC/km

¹<http://www.deq.state.mt.us/StateSuperfund/PDFs/cecralistbycity.pdf>

²<http://www.deq.state.mt.us/StateSuperfund/PDFs/WQASitesByCounty.pdf>

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **DALLAS AERO, LLC., DOCKET NO.: CWA-08-2004-0038** was filed with the Regional Hearing Clerk on February 1, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda L. Morris, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on December 15, 2004, to:


Laura Christoffersen
Knierim, Fewer & Christoffersen, P. C.
20 Broadway 650
Culbertson, MT 59218

Commander – National Pollution Funds Center
U. S. Coast Guard
Finance Center (OGR)
1430 A Kristina Way
Chesapeake, VA 23326

And hand-delivered to:

Honorable Alfred C. Smith
Regional Judicial Officer
U. S. Environmental Protection Agency
999 18th Street, Suite 300 (8RC)
Denver, CO 80202-2466

February 1, 2005



Tina Artemis
Regional Hearing Clerk

